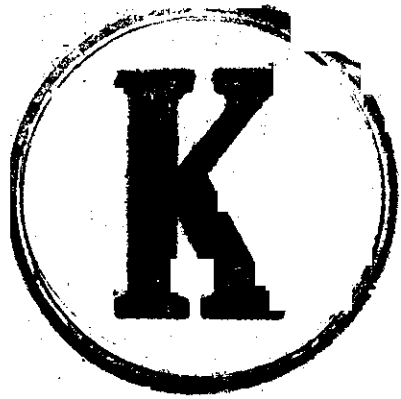




1945

File No. Lag II/45

Legal Department

B.

BRANCH

Subject:— Rules and Notifications
under the Land Acquisition
Act, 1894.

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File No. Lag II/45.

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252-B

K 1.

Attention is invited to F.L.A.'s opinion No. 8726 dated 12-12-44 and to the note of Secy., P.D. dated 15-1-45. From the said note of the Secy., P.D. it seems that he informally discussed the matter again with F.L.A. who amplified the view expressed in the penultimate sentence of his opinion No. 8726 dated 12-12-44.

2. For the reasons stated in paras 1 and 2 of his u.o.r. dated 3.2.45, the Supt. Engineering Project Circle, holds that the description for the notfn. under section 4(1) of the Land Acquisition Act, 1894, should be in terms of sub-para under para. 28 of the Land Acquisition Manual, without mentioning either the names of villages or survey numbers; In his note dated 14-3-45 the Secy. P.D. however observes that sub-para below para. 28 of the Land Acquisition Manual is not legally quite consistent with sections 4 and 5A of the Land Acquisition Act, 1894. His reason for reaching this conclusion is this:-

"If the notfn. is to be in the General terms without giving survey numbers or villages, I cannot see how persons interested in the lands notified can object under section

5A. The result of a general notfn. of the type suggested by P.W.D. might well be vague objections by the holders of the entire tract who would not know whether they are likely to be affected or not. Apart from the question of legality, the procedure suggested in para. 2 of my note referred to above will make the P.W.D. plans more exact at the stage where a notfn. under section 4 is to be issued and will facilitate expeditious disposal."

The F.L.A. is requested to advise whether the view expressed by Secy. P.D. in para 1 of his note dated 14-3-45 read with para. 2 of his note dated 5-1-45 is correct.

I agree with Secy., P.D. that sub-para. below para. 28 of the Land Acquisition Manual is not wholly correct. A notfn. stating that a belt of land etc. is required for

[Handwritten signature]

acquisition would suffice provided that plan is proposed indicating the area and it is kept open for inspection in that taluka or village. Such plan will make it sufficiently clear that lands are likely to be acquired (see R.L.A. No. C Laq 8729 dated 18-9-29). The argument at B of P.L. Secy.'s note does not appear to be quite convincing. The words "land in any locality is likely to be needed" in section 4(1) of the Land Acquisition Act, 1894, refer to cases wherein it is not possible to state what lands exactly are needed without preliminary investigation (p. 35 of Gupte's Land Acq. Act). 'Locality' signifies a particular district confined to a limited region: limited by boundaries, large or small as a country, a state, a town or portion thereof (p. 749 of Nyer's Law Lexicon). It would, therefore suffice for the purposes of section 4(1) of the Land Acq. Act to declare that lands in a village, taluka or district as shown in the plan are needed for a specified public purpose. For the general information of the public a statement may be made that detailed plan or plans are kept for inspection at a specified place. The notfn. read with the plan would be sufficient to indicate what lands in a locality are proposed to be acquired. The procedure indicated in R.L.A.'s No. 8726 dated 12-12-44 as amplified at B of Secy. P.L.'s note dated 15-1-45 would suffice.

Please see 'A' of the P.W.D. note at p. 75 ante. we had agreed to this partially (vide slip C). Since then it seems that Secy., P.L. has informally discussed the matter with P.L.A. (vide B at p. 69 ante.)

Now opinion is sought on para 1 at p. 78 and viz. whether the sub-^{below} para 28 on p. 24 of the Land Legislation ^{Manual} Planned is legally consistent with sections 4 to 5A of the Land Acq. Act. Secy. P.L. this it is not. I agree Reply may be in view of the Secy. P.L. expressed in para 1 at p. 83 ante is correct.

P.L.A.

br

I agree. The concluding portion of para 28 states that

that a notification stating that a belt of land is required running right through the Tabika village sp x from the neighbourhood of A to the neighbourhood of village B would be quite sufficient for the purpose of sec. 4. This statement is not quite consistent with the provisions of secs 4 ~~and~~ to 5A the object of which is to give a sufficiently clear indication of the ^{lands} ~~lands~~ to be ~~enquired~~ enquired.

Reply as suggested.

N. V. D.
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5.

Office of the R.L.A.

The view of the Secretary, Revenue Department,
expressed in para. 1 at page 78 ante is correct.

sd/-

Remembrancer of Legal Affairs.

U.R. to P.D., No. 2606, dated the 4th April 1945.

N.V.D.
17/7
4c.

9. After sub-section (1) of section 4 of the land Acquisition Act, 1894, the following section shall be inserted:-

"(1A) Before a notification under sub-section (1) has been issued it shall be lawful for the provincial Government, if it ^{seems to} shall be necessary, to direct the entry upon, and survey of, any ~~area~~ land in such local it with a view to ascertain the particulars regarding the survey number or numbers of the land needed or likely to be needed for any public purpose".

2. In sub-section (2) of section 4, for the words "Thereupon," the words "Upon issue of a notification under sub-section (1)," shall be substituted.

N.V.D.
17/7
4c.

Office of the P.L.A.

It is not legally feasible to invest P.W.D. officers entrusted with contour survey for the purposes of fixing alignments of roads with the powers of Survey Officers under sections 18 and 95 of the Land Revenue Code. Section 95 only envisages the survey of land "with a view to the settlement of the land revenue, and to the record and preservation of rights connected therewith, or for any other similar purpose"; section 18 enables the appointment of Survey Officers only for the purposes of Chapters VIII, IX and X of the Land Revenue Code. Chapter VIII deals with "Revenue Survey and Settlement", Chapter IX with the "Settlement of Boundaries and the Construction and Maintenance of Boundary Marks" and Chapter X with the determination, towns and cities". The contents of Chapter IX clearly show that it deals with the determination of the boundaries of villages and fields. The words "for any other similar purpose" in section 95 have to be read ejusdem generis with the preceding words and they cannot be interpreted to cover the contemplated contour survey for fixing road alignments for the purpose of acquisition.

2. It appears, however, that under the Land Acquisition Act the P.W.D. officers have all the powers they need for carrying out the contour survey. Sections 4 and 5 of the Act which deal with "preliminary investigation" appear to have been enacted to meet the very situation that appears to have arisen. The publication of a preliminary notification under section 4 will enable the officers authorised by Government and their servants and workmen to do all the acts specified in the second sub-section of that section. The proper course to follow would be to notify under

section 4 all the lands which the L.F.D. consider it to be necessary to enter upon. In case it is found that some of the lands notified need not be entered upon, no harm will have been done. At the most the parties concerned will file objections under section 5A. But if Government does not propose to issue a declaration under section 6 the matter will rest there. In the case of lands which after the preliminary investigation are found to be needed for the purposes of the road the usual procedure under section 6 and the succeeding sections will be followed. In the circumstances it does not appear necessary to amend the Land Acquisition Act.

Sd/-

Remembrancer of Legal Affairs.

U.R. to F.L., No. 3269 , dated the 26th April 1945.

N.V. L.
17/7
4c.